

FILED

OCT - 1 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

EOWYN, CTS, DE LA VEGA,

No. C 07-03619 WHA

Plaintiff,

v.

BUREAU OF DIPLOMATIC SECURITY,  
SAN FRANCISCO FIELD OFFICE, U.S.  
DEPARTMENT OF STATE**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS**

Defendant.

ENTERED IN CIVIL DOCKET 10/01/07

17 Pro se plaintiff Eowyn, Cts. de la Vega seeks damages from the Bureau of Diplomatic  
18 Security, San Francisco Field Office, U.S. State Department ("BDS"), alleging that defendant  
19 "is responsible for grave bodily, emotional harm caused to me, by its failures to remedy (sp)  
20 Borden" (Notice of Rem. Exh. B at 2). This order **DISMISSES** this case on grounds of lack of  
21 subject matter jurisdiction and the failure to state a claim upon which relief can be granted.

22 Plaintiff filed the complaint in the Small Claims Division of the San Francisco Superior  
23 Court on June 4, 2007. When asked to provide a description of the case, plaintiff wrote:  
24 "violations of THE TREATY 9/9/1850 CALIF. REPUB. Signed: Diego de la Vega, known:  
25 ZORRO, have occurred PORTION to a BREAK.foam.JACTOS.(placebo) EXHIBIT monies  
26 issued 3/12/06 cost-co, SF CA. HAG 'the people lake' @ Arlington Residence 480 Ellis Street  
27 #254, SF CA ... a REAL + legacy of ZORRO: I am his heir: This bldg in processes of change in  
28 mgmt. The State of CALIF must remedy a BREAK, et al IMMED" (*id.* Exh. A at 5). Plaintiff

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1 also delivered to defendant incomprehensible handwritten statements with drawings and symbols  
2 (*id.* at 10–24). Aside from a four-page handwritten “letter regarding numerous issues from  
3 Eowyn Cts. De la Vega” filed on July 27, 2007, which was equally perplexing and incoherent,  
4 plaintiff has not produced any other supporting documents.

5 Despite an allegation of improper service under Federal Rule of Civil Procedure  
6 4(i)(2)(B), the BDS removed the case on July 13, 2007. On July 17, 2007, the BDS moved for  
7 dismissal with prejudice based on lack of subject-matter jurisdiction under FRCP 12(b)(1) and  
8 for failure to state a claim under FRCP 12(b)(6). On July 24, 2007, the case was related to an  
9 earlier case plaintiff had against the federal government, which the Court had already dismissed  
10 with prejudice for lack of subject matter jurisdiction.

11 Pursuant to FRCP 12(b)(1), dismissal is appropriate when the Court lacks subject-matter  
12 jurisdiction. The Court is presumed to lack subject-matter jurisdiction unless the contrary is  
13 affirmatively demonstrated. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377  
14 (1994). Read in plaintiff’s favor, the complaint appears to allege various tort claims against the  
15 BDS. “Federal agencies cannot be sued *eo nomine* unless so authorized by Congress in explicit  
16 language.” *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185, 1188 (9th Cir. 1998)  
17 (internal quotations omitted). Tort claims against the United States only arise under the Federal  
18 Torts Claims Act, which provides a statutory waiver of sovereign immunity. 28 U.S.C. 1346(b).  
19 Federal agencies are not proper defendants under the FTCA; actions should be filed against the  
20 United States. 28 U.S.C. 1346(b), 2679(a). Although the judicial policy of treating pro se  
21 litigants leniently suggests allowing leave to amend, even the substitution of the United States as  
22 a defendant, would not cure the jurisdictional defects.

23 Section 2675(a) of the FTCA mandates that a claimant file a claim with the appropriate  
24 agency before a claimant may file a civil action. In response to a small-claims form question  
25 inquiring if plaintiff asked the defendants to pay her before filing suit, she checked the box  
26 indicating “yes” and wrote “I HAVE BEEN IN-LENGTHY REVIEW [circled] @ Bureau  
27 Diplomatic Security AS REGARDS.CLOAK.ADOPT.JACTOS. KLEID” (Notice of Rem. Exh.  
28

1 B at 3). Plaintiff then checked the “no” box indicating that she was not suing a public entity, and  
2 she wrote “KLEID” next to the “no” box (*id.*). Failure to exhaust administrative remedies prior  
3 to filing a civil action results in a lack of subject-matter jurisdiction by the district court. *See*  
4 *Meridian Int'l Logistics, Inc. v. United States*, 939 F.2d 740, 743 (9th Cir. 1991). Since plaintiff  
5 does not allege filing a written claim with the BDS, a public entity, she apparently has not met  
6 the exhaustion requirement. Because plaintiff has failed to exhaust her administrative claims, the  
7 Court lacks subject-matter jurisdiction.

8 Even if plaintiff had exhausted her administrative claims, dismissal would still be proper  
9 if plaintiff failed to state a claim under Rule 12(b)(6). A dismissal is appropriate where there is  
10 either a “lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a  
11 cognizable legal theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).  
12 In resolving a Rule 12(b)(6) motion, the court must construe the complaint in the light most  
13 favorable to the plaintiff, accept all well-pleaded factual allegations as true, and determine  
14 whether plaintiff can prove any set of facts to support a claim that would merit relief. *Cahill v.*  
15 *Liberty Mut. Ins. Co.*, 80 F.3d 3346, 337–38 (9th Cir. 1996). Here, plaintiff’s complaint is  
16 completely incomprehensible. Even when construed in the light most favorable to the plaintiff,  
17 the fragmented sentences, symbols, and drawings do not come close to a cognizable legal theory  
18 nor do they represent facts alleged under a cognizable legal theory. Accordingly, the Court finds  
19 that plaintiff has failed to state a claim upon which relief can be granted.

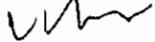
## 20 CONCLUSION

21 Because she is pro se, plaintiff must be given a chance to amend unless no type or degree  
22 of amendment would save her complaint. Here, the Court believes that no chance to amend need  
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1 be given. Plaintiff's allegations make clear that none of her proffered theories will cure the  
2 jurisdictional defect. For that reason, the Court **GRANTS** defendant's motion to **DISMISS**  
3 **WITHOUT LEAVE TO AMEND**. The Clerk shall close the file.

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5 **IT IS SO ORDERED.**

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7 Dated: October 1, 2007.

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10 WILLIAM ALSUP  
11 UNITED STATES DISTRICT JUDGE  
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5 IN THE UNITED STATES DISTRICT COURT

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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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9 EOWYN, CTS. DE LA VEGA,

10 Plaintiff,

No. C 07-00062 WHA

11 v.

12 DEPARTMENT OF PUBLIC HEALTH and  
13 DRUG ENFORCEMENT ADMINISTRATION,

**ORDER GRANTING  
DEFENDANTS'  
MOTION TO DISMISS**

14  
15 Defendants.

16 Pro se plaintiff Eowyn, Cts. de la Vega, alleges that the Department of Public Health  
17 and the Drug Enforcement Administration have intimidated, harassed and sexually abused her,  
18 placed her under surveillance and, "plundered" her social security number, public health records  
19 and the birth certificates of her children resulting in her "atomic breakage."<sup>1</sup> This order  
20 **DISMISSES** this case.

21 Plaintiff filed the complaint in the California Superior Court Small Claims Division of  
22 San Francisco on November 16, 2006. Plaintiff's complaint consists of a California small-  
23 claims form and a handwritten declaration. Where asked on the small-claims form why the  
24 defendants owe her money, plaintiff alleged the following:

25 DPH-SF CA, and DEA-SF CA have seriously violated [symbol]  
26 atomic COURTESY, SENSITIVITY, Advise and Consent against  
27 me, jactos.org. ie. sexual abuses HARM, INTIMIDATION.

28  
29 <sup>1</sup> Plaintiff stated in her complaint that she was the great-granddaughter of Diego de la Vega (Zorro) and the  
niece of Greta Garbo von Gustafson. In her opposition, plaintiff stated that she was the granddaughter of Edward  
VIII. Given the familial allegations, "Cts." is likely the abbreviation for "Countess."

1 (Compl. at 3). In her declaration plaintiff alleged:

2           ... my atomic SENSITIVITY [boxed] is violated by processes  
3 HARM-STUDIO-DISPLACE [each word boxed] as known, my  
4 Social Security # has been plundered by these (2) entities, known:  
5 defendants. These violations of SENSITIVE [boxed] Advise and  
6 Consent consist of atomic PLUNDER [boxed], known: my public  
7 health records and birth certificates of my children; and EO  
8 warrants 51,5250... .

9 Despite an allegation of improper service under Federal Rule of Civil Procedure 4(i)(2)(B), the  
10 DEA removed the case on January 4, 2007. On January 12, 2007, the DEA appeared specially  
11 to move for dismissal with prejudice based on lack of subject-matter jurisdiction under FRCP  
12 12(b)(1) and for failure to state a claim under FRCP 12(b)(6). On February 22, 2007, the Court  
13 called the case twice but plaintiff failed to appear to oral argument.

14           Pursuant to FRCP 12(b)(1), dismissal is appropriate when the Court lacks subject-matter  
15 jurisdiction. The Court is presumed to lack subject-matter jurisdiction unless the contrary is  
16 affirmatively demonstrated. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377  
17 (1994). Read in plaintiff's favor, the complaint appears to allege various tort claims against the  
18 DEA and DPH. "Federal agencies cannot be sued *eo nomine* unless so authorized by Congress  
19 in explicit language." *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185, 1188 (9th Cir.  
20 1998) (internal quotations omitted). Tort claims against the United States only arise under the  
21 Federal Torts Claims Act, which provides a statutory waiver of sovereign immunity. 28 U.S.C.  
22 1346(b). Federal agencies are not proper defendants under the FTCA; actions should be filed  
23 against the United States. 28 U.S.C. 1346(b), 2679(a). Although the judicial policy of treating  
24 pro se litigants leniently suggests allowing leave to amend, even the substitution of the  
25 United States as a defendant, would not cure the jurisdictional defects.

26           "The timely filing of an administrative claim is a jurisdictional prerequisite to the  
27 bringing of a suit under the FTCA and, as such, should be affirmatively alleged in the  
28 complaint." *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980) (internal citations omitted).  
Section 2675(a) of the FTCA mandates that a claimant file a claim with the appropriate agency  
before a claimant may file a civil action. The written claim must be presented to the agency  
within the two year statute of limitations. 28 U.S.C. 2401(b).

1 In response to a small-claims form question inquiring if plaintiff asked the defendants to  
2 pay her before filing suit, she checked the box indicating "yes" and wrote "I have continuously  
3 notified both these entities BO KLEID of SP [circled] atomic SENSITIVITY to no avail."  
4 Plaintiff checked the box indicating that she was suing a public entity and entered "BO KLEID  
5 SP [circled] 5/16/06 UNITED NATIONS [written above date]" in response to the request for  
6 the date the written claim was filed with the entity. Failure to exhaust administrative remedies  
7 prior to filing a civil action results in a lack of subject-matter jurisdiction by the district court.  
8 *See Meridian Int'l Logistics, Inc. v. United States*, 939 F.2d 740, 743 (9th Cir. 1991). Since  
9 plaintiff does not allege filing a written claim with the DEA, she apparently has not met the  
10 exhaustion requirement. Plaintiff filed the instant action on November 16, 2006, thus her  
11 claims may also be time barred. Plaintiff alleges the events as ongoing since September 11,  
12 2001. Given the two-year statute of limitations for filing a tort claim with the proper federal  
13 agency, any claim accruing prior to November 16, 2004, is barred. Because plaintiff has failed  
14 to exhaust her administrative claims, the Court lacks subject-matter jurisdiction.

## CONCLUSION

Because she is pro se, plaintiff must be given a chance to amend unless no type or degree of amendment would save her complaint. Here, the Court believes that no chance to amend need be given. Plaintiff's allegations make clear that none of her proffered theories will cure the jurisdictional defect. For that reason, the Court **GRANTS** the DEA's motion to **DISMISS PLAINTIFF'S FEDERAL CLAIMS WITHOUT LEAVE TO AMEND.**

21 Since the Court lacks subject-matter jurisdiction, it is unnecessary to address the Rule  
22 12(b)(6) motion. Pursuant to 28 U.S.C. 1367(c), the Court declines to exercise supplemental  
23 jurisdiction over the state law causes of action alleged against DPH, thus the Court **DISMISSES**  
24 **THE STATE CLAIMS WITHOUT LEAVE TO AMEND.** Accordingly, the Clerk shall close the file.

IT IS SO ORDERED.

27 || Dated: February 22, 2007.

W<sup>m</sup> Als  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE